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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

In re:

**THE LITIGATION PRACTICE
GROUP, P.C.,**

Debtor.

Case Number 8:23-bk-10571-SC

Chapter 11

**UNITED STATES TRUSTEE'S
LIMITED OPPOSITION TO
DISCLOSURE STATEMENT
DESCRIBING JOINT CHAPTER 11
PLAN OF LIQUIDATION (DATED
MARCH 22, 2024)**

DATE: May 14, 2024
TIME: 1:30 p.m. _____
CTRM: 5C
411 W. 4th Street
Santa Ana, CA 92701

**TO THE HONORABLE SCOTT CLARKSON, UNITED STATES
BANKRUPTCY JUDGE, DEBTOR, DEBTOR'S COUNSEL, CHAPTER 11
TRUSTEE, AND ALL PARTIES IN INTEREST:**

The United States Trustee hereby files this limited opposition (the "Limited
Opposition") to the Disclosure Statement (the "Disclosure Statement") Describing Joint

Chapter 11 Plan of Liquidation (Dated March 22, 2024. Bankr. Dkt. # 1058), because: (1) the Disclosure Statement does not disclose the amount of professional fees incurred by each professional; and (2) the exculpation clause does not have a carve out for fraud, willful misconduct, or gross negligence as required by *Blixseth v. Credit Suisse*, 961 F.3d 1074 (9th Cir. 2020). The United States Trustee does not believe that the Disclosure Statement contains “adequate information” upon which the parties in interest will be able to make an informed judgment about the Plan as required by 11 U.S.C. § 1125.

I. MINIMUM DISCLOSURE REQUIREMENTS

Section 1125 of the Bankruptcy Code prohibits the solicitation of acceptances or rejections of a plan from the holder of a claim or interest unless a written disclosure statement, which the court has found to contain adequate information, has first been transmitted to such holder. “Adequate information” is defined as:

“[I]nformation of a kind, and in sufficient detail, as far as reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan. . .”.

11 U.S.C. §1125(a)(1).

The phrasing of this section indicates that a finding of “adequate information” will be made on a case-by-case basis. No set of guidelines, therefore, could hope to be exclusive or exhaustive. However, there has developed some consensus around a “core” set of factors to be considered in most cases. The leading case setting forth these factors is *In re Metrocraft Publishing Services, Inc.*, 30 B.R. 567 (Bankr. N.D. Ga. 1984). The

Metrocraft court found that factors relevant to evaluating the adequacy of a disclosure

“may include” the following:

- (1) the events which led to the filing of a bankruptcy petition;
- (2) a description of the available assets and their value;
- (3) the anticipated future of the company;
- (4) the source of information stated in the disclosure statement;
- (5) a disclaimer;
- (6) the present condition of the debtor while in chapter 11;
- (7) the scheduled claims;
- (8) the estimated return to creditors under a chapter 7 liquidation;
- (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information;
- (10) the future management of the debtor;
- (11) the chapter 11 plan or a summary thereof;
- (12) the estimated administrative expenses, including attorneys’ and accountant’s fees;
- (13) the collectibility of accounts receivable;
- (14) financial information, data, valuations or projections relevant to the creditors’ decision to accept or reject the Chapter 11 plan;
- (15) information relevant to the risks posed to creditors under the plan;
- (16) the actual or projected realizable value from recovery of the preferential or otherwise voidable transfers;

(17) litigation likely to arise in a non-bankruptcy context;

(18) tax attributes of the debtor; and

(19) the relationship of the debtor with affiliates.

Metrocraft, supra, 39 B.R. at 568.

II. DISCLOSURE STATEMENT

The United States Trustee files this limited objection to the Disclosure Statement/Plan, as follows:

1. The Disclosure Statement Should Provide the Estimated Amount of Professional Fee Claims.

The Disclosure Statement, at pages 27 to 29, provides for the treatment of administrative claims, including the Professional Fee Claims. However, it does not list the estimated anticipated amount of professional fees. Specifically, it states that “[t]he administrative claim amounts set forth above simply represent the Plan Proponents’ best estimate as to the identity of the Holders and the amounts of projected administrative claims in this case. The actual administrative claims may be higher or lower” Disclosure Statement, at p. 28:27 at p. 29:1-2. However, no estimated claim amounts were disclosed in the Disclosure Statement itself.

Section 1129(a)(9) requires that all administrative and priority creditors be paid in full on the Effective Date unless they agree to a different treatment of their claims. *See* 11 U.S.C. § 1129(a)(9). The Disclosure Statement states that the Estate will have sufficient funds to meet the feasibility requirement because: (1) the Estate projects to hold at least

\$12.7 million in cash (as of the Effective Date); and (2) the estimated amounts of Allowed Secured Claims, Allow Administrative Claims and All Priority Claims totaled only approximately \$11.8 million. *See* Disclosure Statement, at p. 83:7-14.

Here, the Disclosure Statement specifically identified the secured and priority claim obligations. As stated above, the Disclosure Statement does not list the estimated anticipated amount of professional fees. As such, the United States Trustee is not able to verify whether the Estate will have sufficient funds to meet the feasibility requirement.¹

2. The Exculpation Clause Should Be Revised to Provide a Carve-Out for Fraud, Willful Misconduct or Gross Negligence.

Section III(C)(4) of the Disclosure Statement provides for exculpation and limitation of liability, stating:

To the maximum extent permitted by law, neither the Trustee, the Liquidating Trustee, the Estate, the Committee, the Post-Confirmation Oversight Committee, nor any of their employees, officers, directors, shareholders, agents, members, representatives, or the professionals employed or retained by any of them, whether or not by Court order shall have or incur liability to any person or entity for an act taken or omission made in good faith in connection with or related to the formulation and implementation of the Plan, the Disclosure Statement, or a contract, instrument, release, or other agreement or document created in connection therewith, the solicitation of acceptances for or confirmation of a Plan, or the consummation and

¹ On April 29, 2024, the Trustee and the Committee filed a Notice of First Supplement to the Disclosure Statement (the “Supplement”) [Bankr. Dkt. # 1145] to provide a liquidation analysis. The Supplement projects that the post-petition professional fees and Chapter 11 Trustee fees to be \$7.7 million and \$479,149.00, respectively. Nonetheless, the United States Trustee is unclear if the \$7.7 million estimated fees covers all Professional Fee Claims listed in the Disclosure Statement (at page 28) and the Supplement does not provide a breakdown of the fees for each Professional Fee Claim listed in the Disclosure Statement.

1 implementation of the Plan and the transactions contemplated
2 therein

3 Disclosure Statement, at p. 15-23.

4 In *Blixseth v. Credit Suisse*, 961 F.3d 1074 (9th Cir. 2020), the Ninth Circuit held that
5 a plan provision exculpating non-debtors was permissible because it did not “affect
6 obligations relating to the claims filed by creditors and discharged through the bankruptcy
7 proceedings.” *Id.* at 1081. In doing so, the Ninth Circuit specifically noted that the
8 exculpation clause at issue did not release parties from willful misconduct or gross
9 negligence. *Id.*

12 Here, the exculpation clause at issue does not provide a carve out for fraud, willful
13 misconduct or gross negligence. The Court should require that the exculpatory provision
14 carve out acts which constitute fraud, willful misconduct, or gross negligence.²

16 WHEREFORE, the United States Trustee submits his limited objection to the
17 approval of the Disclosure Statement unless the foregoing concerns are addressed by the
18 Trustee,

20 PETER C. ANDERSON
21 UNITED STATES TRUSTEE

22 Dated: May 1, 2024

23 /s/ Kenneth M. Miskin
24 Kenneth M. Miskin
25 Assistant United States Trustee

26 ² The Disclosure Statement, at pages 55 to 56, provides for the Liquidating Trustee and Post-
27 Confirmation Oversight Committee’s exculpation, indemnification, insurance and liability limitation.
28 There, the exculpatory provision carved out acts which constitute “bad faith, fraud, or willful misconduct.”
Disclosure Statement, at p. 5514-27 to p. 66:1.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

411 West Fourth Street, Suite 7160, Santa Ana, CA 92701

A true and correct copy of the foregoing document entitled (*specify*):

UNITED STATES TRUSTEE'S LIMITED OPPOSITION TO DISCLOSURE STATEMENT DESCRIBING JOINT CHAPTER 11 PLAN OF LIQUIDATIONG (DATED MARCH 22, 2024)

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) **May 1, 2024**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

SEE ATTACHED SERVICE LIST (IF APPLICABLE)

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL: On (date) **May 1, 2024**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

SEE ATTACHED SERVICE LIST (IF APPLICABLE)

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) **May 1, 2024**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

SEE ATTACHED SERVICE LIST (IF APPLICABLE)

☒ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

May 1, 2024
Date

Queenie Ng
Print Name

/s/ Queenie Ng
Signature

ADDITIONAL SERVICE INFORMATION

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This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

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SEE NEF FOR CONFIRMATION OF ELECTRONIC TRANSMISSION TO THE U.S. TRUSTEE AND ANY TRUSTEE IN THIS CASE, AND TO ANY ATTORNEYS WHO RECEIVE SERVICE BY NEF.

2. **SERVED BY U.S. MAIL**

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